IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 4118 of 2007()

CRA.634/2003 of III ADDL.SESSIONS COURT, KOLLAM
CC.56/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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REVN. PETITIONERS:

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1. HARSHAKUMAR KURIES PVT. LTD. EZHUKONE

2. HARSHAKUMAR KURIES PVT.LTD.
REPRESENTED BY ITS CHAIRMAN HARSHAKUMAR,
EZHUKONE POST, KOTTARAKKARA

BY ADV. SRI.T.MADHU

RESPONDENTS:

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1. GOPINATHAN, GOPI SADANAM,
NEELESWARAM POST
KOTTARAKKARA

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR
SRI.B.MOHANLAL

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4118 of 2007

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Dated: 19-11-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who are the accused in C.C. No. 56 of 2004 on the file of the J.F.C.M.-I, Kottarakkara challenges the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioners in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to

whether a proper sentence has been imposed on the Revision Petitioners. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioners are set aside and instead the petitioners are sentenced to pay a fine of Rs. 6,00,000/- (Rupees six lakhs only) which shall be deposited before the trial court within six months from today failing which the 2nd accused/second revision petitioner shall suffer simple imprisonment for three months by way of default sentence. The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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